

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3335 OF 2007

Smt. Vandana U. Solanki & Anr. ...Petitioners

Vs.

Smt. Kamladevi Brijnath Tiwari
& Anr. ...Respondents.

Mr. C.K. Tripathi for the petitioner.

CORAM : ANOOP V. MOHTA, J.
DATED : 16th July, 2007

P.C.

1. In a suit filed by landlord Int. Notice no.111/2006 in R.A.E. & R. in Suit no.657/1997, pending in the Court of Small Causes Mumbai, at Bombay has been taken out by the applicant that they be joined as a party defendants.

2. The basic submission of applicant/ respondent No.2 is that City Survey No. 2034 and 2039 were renumbered as final plot No.153 and 154. The chawl claimed by the plaintiff is situated in final plot No.153 and 154. Therefore, in view of the Town Planning Scheme No.V of 1959 which came into force on 1st August, 1959, all the property which was acquired vests with the applicant as per the provisions of Section 88 of Maharashtra Regional Town Planning Act. The scheme in question then also attained its finality and,

therefore, in view of the fact that the plot in question, meets ambit of the scheme, the learned judge was right in allowing this application to join the applicant as a party.

3. The learned counsel appearing for the petitioner has basically relied on 1998(1) ALL MR 782, **Foolchand Nanhelal Parwar Vs. Shabbir Husain, Mulla Akbar Ali Bohra & Anr.** and AIR 1977 Orissa 183, **Pravat Kumar Misra Vs. Prafulla Chandra Misra & Anr.**, as in both these matters, considering the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short, "CPC"), Court came to the conclusion that a suit for eviction of tenant on ground of default in rent, third person claiming to be owner is not necessary or proper party. The facts are totally distinct and distinguishable in the present case. The applicant, respondent No.2 in view of the scheme as referred above and in view of the provisions of the Act, acquired the suit property, and since 1959. Therefore, even on the date of filing of the suit by the petitioner.

4. Taking all this into account, the petition is dismissed. No costs.

[ANOOP V. MOHTA, J.]